

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 16 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )

STEVEN L. GRADICK )

TERRY C. JENKS )

For Construction Permit for a )  
New FM Station on Channel 288A )  
in Bowdon, Georgia )

MM DOCKET NO. 93-26 /

File No. BPH-911031MD

File No. BPH-911031MF

To: The Honorable Richard L. Sippel  
Administrative Law Judge

**JOINT REQUEST  
FOR APPROVAL OF SETTLEMENT AGREEMENT  
AND MOTION FOR SUSPENSION OF PROCEDURAL DATES**

Steven L. Gradick ("Gradick") and Terry C. Jenks ("Jenks"), by their attorneys and pursuant to Section 311 of the Communications Act and Section 73.3525 of the Commission's rules, jointly petition the Presiding Judge to suspend the procedural dates in the above-captioned proceeding, approve the attached Settlement Agreement, dismiss the application of Jenks, grant the application of Gradick, and terminate this proceeding.<sup>1/</sup> In support

<sup>1/</sup> This request is premised on the finality of the Memorandum Opinion and Order ("Order") in the Bowdon, Griffin, Hogansville and Sparta, GA proceeding, MM Docket 90-309, DA 93-932, released August 4, 1993. If that Order is appealed, the parties hereto request that this proceeding be held in abeyance until resolution of the issue.

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whereof, the following is submitted:

The Settlement Agreement submitted herewith provides for the dismissal of Jenk's application in exchange for partial reimbursement of expenses incurred by Mr. Jenks in connection with his application for a new FM station in Bowdon, Georgia. As required by §73.3525 of the Rules, attached to the Agreement are declarations on behalf of both parties, in which Jenks demonstrates that he will not receive consideration in excess of his legitimate and prudent expenses and declares that his application has been prosecuted in good faith and not for the purpose of entering into a settlement agreement, and both parties declare that: (1) no consideration other than as set forth in the Settlement Agreement has been promised or paid to Jenks; and (2) the public interest would be served by conservation of the resources of the parties and the Commission and the more expeditious initiation of service to Bowdon, Georgia.

Other than the Jenks application, there are no obstacles to a grant of the Gradick application. There are no unresolved issues concerning the Gradick application. The radiofrequency hazard issue was resolved by Order, FCC 937-131 dated March 31, 1993. Accordingly, upon approval of the Settlement Agreement, the Jenks application should be dismissed, the Gradick application should be granted, and this proceeding should be terminated. Jenk's request for dismissal of his application is conditioned upon grant of

this Joint Request, approval of the Settlement Agreement, and grant of Gradick's application of final order(s) of the Commission.

Gradick also respectfully requests that, pursuant to Memorandum Opinion and Order In the Matter of Proposal to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd. 3403 (1991), he be allowed to withdraw his divestiture proposal relating to WKNG(AM) in Tallapoosa, Georgia and WCKS-FM in Fruithurst, Alabama. As the Commission stated in paragraph 6 thereof, an applicant is permitted to withdraw such proposals in conjunction with settlement agreements filed prior to the date established for the exchange of exhibits. Since the parties have not yet exchanged exhibits, this request clearly falls within the parameters of the Memorandum Opinion and Order, 6 FCC Rcd 3403. Accordingly, there are no policy reasons not to allow withdrawal of Gradick's divestiture proposal.

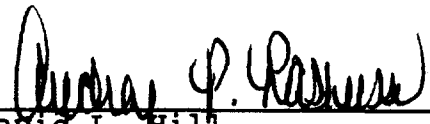
In view of the proposed settlement of this proceeding, the parties move that all procedural dates be suspended pending disposition by the Presiding Judge on this Joint Request for Approval of Settlement Agreement and Motion for Suspension of Procedural Dates. Such suspension will be consistent with the intention of the parties to conserve public and private resources. Upon approval of the Settlement Agreement, the proceeding should be terminated.

**WHEREFORE,** for the foregoing reasons, it is respectfully requested that this Joint Petition for Approval of Settlement Agreement and Motion for Suspension of Procedural Dates be granted, the application of Jenks be dismissed, the application of Gradick be granted, Gradick be given leave to withdraw his divestiture pledge, and this proceeding be terminated.

Respectfully submitted,

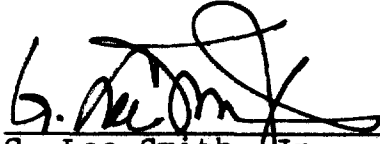
**STEVEN L. GRADICK**

By:

  
David L. Hill  
Audrey P. Rasmussen  
His Attorneys  
O'Connor & Hannan  
1919 Pennsylvania Ave., N.W.  
Suite 800  
Washington, D.C. 20006  
(202) 887-1400

**TERRY C. JENKS**

By:

  
G. Lee Smith, Jr.  
His Attorney  
305 Courtyard Square  
Carrollton, Georgia 30117

Dated: September 16, 1993

DECLARATION OF TERRY C. JENKS

Terry C. Jenks, under penalty of perjury under the laws of the United States of America, hereby declares:

1. I am an applicant before the Federal Communications Commission for a new FM station at Bowdon, Georgia.

2. I have entered into a Settlement Agreement with Steven L. Gradick, also an applicant, looking to dismissal of my application and a grant of Mr. Gradick's application.

3. The Settlement Agreement and its Exhibit A, Escrow Agreement and Exhibit B, Promissory Note are the only Agreements between the parties and no consideration of any kind has been paid or promised to me except as set forth in these documents.

4. I will not receive consideration in excess of my legitimate and prudent expenses, a list of which is attached.

5. I have prosecuted its application in good faith and not for the purpose of entering into a settlement agreement.

6. Approval of the Settlement Agreement will conserve the resources of the Commission and the parties and expedite the commencement of service to Bowdon, Washington, and for these reasons would be in the public interest.

  
Terry C. Jenks

September 13, 1993

EXHIBIT 1

## APPLICATION EXPENSES OF TERRY C. JENKS

Fletcher, Heald, & Hildreth Attorneys At Law	ATTORNEY FEES	\$46,680.32
G. Lee Smith, Jr. Attorney At Law	ATTORNEY FEES	4,500.00
Smith & Powstenko	ENGINEERING FEES	2,172.81
Federal Communications Commission	FILING & HEARING FEES	8,790.00
Duffey Realty	TOWER SITE OPTION	500.00
Bowdon Bulletin	ADVERTISING	36.30
Spectrum Broadcasting Company	APPLICATION EXPENSE REIMBURSEMENT	<u>12,000.00</u>
	TOTAL	\$74,679.43 =====

DECLARATION OF STEVEN L. GRADICK


Steven L. Gradick, under penalty of perjury under the laws of the United States of America, hereby declares:

1. I am an applicant before the Federal Communications Commission for a new FM station at Bowdon, Georgia.

2. I have entered into a Settlement Agreement with Terry C. Jenks, also an applicant, looking to dismissal of Mr. Jenks's application and a grant of my application.

3. The Settlement Agreement and its Exhibit A, Escrow Agreement and Exhibit B, Promissory Note are the only agreements between the parties and no consideration of any kind has been paid or promised to me except as set forth in these documents.

4. Approval of the Settlement Agreement will conserve the resources of the Commission and the parties and expedite the commencement of service to Bowdon, Washington, and for those reasons would be in the public interest.

  
\_\_\_\_\_  
Steven L. Gradick

September 14, 1993

## SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is made and entered into by and between Steven L. Gradick ("Gradick"), an individual, and Terry C. Jenks ("Jenks"), an individual, referred to collectively as the "Parties."

**WHEREAS**, Gradick and Jenks have each filed applications before the Federal Communications Commission ("FCC") for authority to construct and operate a new FM broadcast station on Channel 288A at Bowdon, Georgia (the "Applications");

**WHEREAS**, the Applications of Gradick (FCC File No. BPH-911031MD) and Jenks (FCC File No. BPH-911031MF) are mutually exclusive and only one such application may be granted by the FCC;

**WHEREAS**, the Gradick and Jenks Applications have been set for comparative hearing by the FCC, before an Administrative Law Judge;

**WHEREAS**, Gradick and Jenks wish to avoid the burden and expense associated with the further prosecution of their Applications through a comparative hearing; and

**WHEREAS**, the public interest will be best served by the expeditious authorization of a new FM broadcast station to serve Bowdon, Georgia.

**NOW, THEREFORE**, IN WITNESS OF THE ABOVE and in consideration of the mutual promises and undertakings set forth below, the parties hereby agree, contract, and covenant as follows:



1. This Agreement is subject to the prior approval of the FCC and will not be consummated until such approval has been granted and a Final Order(s), as defined in Paragraph 7, infra, is issued.

2. Jenks will request dismissal of his application at the same time that the Parties file a joint request for approval of this Agreement with the FCC. The request for dismissal shall be conditioned on approval of this Agreement, grant of Gradick's Application, and dismissal of Jenks' Application by Final Order(s) of the FCC.

3. Conditioned upon the finality of the Memorandum Opinion and Order affirming the Report and Order in MM Docket No. 90-309 DA 93-932, released August 4, 1993. Gradick will pay to Jenks the sum of Fifty-Two Thousand Dollars (\$52,000.00), or such amount as is approved by the FCC, as follows:

(a) Immediately upon execution of this Agreement, Gradick shall deliver to communications counsel for Jenks (G. Lee Smith, Jr.) and communications counsel for Gradick (Audrey P. Rasmussen of O'Connor & Hannan) (hereinafter referred to as Co-Escrow Agents), the sum of Ten Thousand Dollars (\$10,000.00), which will be placed by Co-Escrow Agents into an interest-bearing escrow account in a federally insured bank (the "Escrow Account"); to be administered jointly by the Co-Escrow Agents, pursuant to an Escrow Agreement to be entered into by the Parties, a copy of which

is attached hereto as Attachment A. Also, immediately upon execution of this Agreement, Gradick will execute a Promissory Note, in the form attached hereto as Attachment B ("Promissory Note"), which will be delivered to the Escrow Agents at that time as well.

(b) Within five (5) days after the FCC Order(s) approving this Agreement, granting the Gradick Application, and dismissing the Jenks Application and the finality of the Memorandum Opinion and Order in MM Docket No. 90-309 referenced above, whichever is last to occur and no longer subject to administrative or judicial rehearing, appeal, reconsideration, or review, the Co-Escrow Agents will pay to Jenks the sum of Ten Thousand (\$10,000.00) from the Escrow Account (the "Initial Payment"). On the same date, they will also deliver the executed Promissory Note to Jenks. Any interest in the Escrow Account will be paid to Gradick.

(c) Beginning on the earlier of (1) the date Gradick commences operation of his new FM station at Bowdon, Georgia, pursuant to program test authority, or (2) the date eighteen (18) months after the Order(s) approving this Agreement is released, provided that all of the above referenced Orders have become final, and continuing on a monthly basis thereafter, Gradick shall pay directly to Jenks, in accordance with the terms of the Promissory Note, the sum of

One Thousand Dollars (\$1,000.00), until such time as the total amount due to Jenks, as approved by the FCC, is paid in full.

(d) In the event that Gradick fails to timely meet his obligations to make any payment due to Jenks under subparts a-c above and as set forth in the Promissory Note to be executed pursuant to this Agreement, Gradick agrees to assign to Jenks, upon FCC approval, the authorization(s) for the new FM station on Channel 288A at Bowdon (or any authorization granted to Gradick as an improvement or substitution for Channel 288A at Bowdon), in consideration for which Jenks will pay to Gradick, at closing, a sum equal to the total amount paid by Gradick to Jenks as of that date pursuant to this Agreement. Gradick agrees to join with Jenks in preparing, filing, and prosecuting all necessary applications to the FCC and in seeking all approvals and consents necessary to effectuate the assignment to Jenks.

(e) Gradick agrees that he will not sell, assign, convey, or transfer control over the authorization for the new FM station at Bowdon, Georgia, unless and until the entire \$52,000.00 has been paid to Jenks. Gradick may prepay all or any payments due hereunder, but the entire \$52,000.00 must be paid to Jenks prior to closing on any transaction by which Gradick conveys his interest in the authorization for Bowdon.

(f) If Gradick for any reason surrenders his construction permit or license for the new Bowdon FM broadcast station, or if Gradick's authorization is revoked, rescinded, canceled or otherwise forfeited before Gradick has completed the payments required to be made to Jenks pursuant to subparagraphs a-c of this paragraph, Gradick's obligation to pay Jenks pursuant to this paragraph shall survive and shall not be terminated or canceled.

4. If the FCC disapproves this Agreement or refuses to dismiss the application of Jenks, by Final Order(s), Gradick will not be obligated to pay any sum to Jenks, Jenks' request for dismissal of his application will be null and void, and the Applications will be returned to hearing status.

5. If there is no final Order(s) by the FCC approving this Agreement and dismissing the application of Jenks by June 1, 1994, either Party at any time thereafter, upon ten (10) days written notice to the other Party, may terminate the Agreement, provided that the Party seeking to terminate the Agreement is not in default thereunder. The Parties agree that time is of the essence with respect to the provisions of this paragraph. Except in the event of default by the other Party, no Party may seek to terminate this Agreement after the FCC has issued an Order(s) approving this Agreement, and dismissing the application of Jenks, regardless of the date on which such an Order(s) is granted.

6. As used in this Agreement, the following terms have the following meanings:

a. "Order" means a written authorization, determination, denial, ruling or other action by the FCC or its staff, including the Administrative Law Judge designated to preside over the hearing proceeding with respect to the applications referenced herein.

b. "Final Order" means an Order with respect to which the time for any and all requests for reconsideration, review, or appeal, and for reconsideration and review by the FCC on its motion, has expired, with no such request, reconsideration, review or appeal having been timely requested or instituted.

7. Within five (5) business days of the execution of this Agreement (or such later time as the FCC may authorize), the Parties will file it with the FCC, together with a joint request for its approval, in accordance with Section 73.3525 of the FCC's Rules and regulations. Each party will provide the information and documents for inclusion in a request for approval of this Agreement. Each Party will promptly submit to the FCC any additional information pertaining to it which, from time to time, may be reasonably necessary or appropriate to securing expeditiously a Final Order(s) of the FCC approving this Agreement and dismissing the application of Jenks.

8. The Parties agree to exercise their best efforts to obtain approval of this Agreement from the FCC, and to undertake any and all steps reasonably necessary for the successful prosecution of this Agreement, including the preparation and filing of any information or documentation in support thereof, Gradick will not submit any filings to the FCC, or propose any amendments to his application, that would in any way delay the approval of this Agreement by the FCC or the issuance of a construction permit for the FM station to Gradick.

9. Subject only to the right of termination as provided in Paragraph 5, supra, no Party to this Agreement shall undertake any action to preclude, hinder or delay the issuance of a Final Order(s) approving this Agreement, the payments proposed herein, or dismissal of the application of Jenks. No Party, however, will be required to file or join in any request for reconsideration, review or appeal of the Order(s) issued by the FCC.

10. Any notice pursuant to or relative to this Agreement shall be sent return receipt requested and be deemed given when delivered in writing to the other Party at the addresses shown below unless a different address is provided in writing to the other Party:

To Gradick:

Steven L. Gradick  
2225 Victory Church Road  
Bowdon, Georgia 30100

With a copy to:

Audrey P. Rasmussen, Esq.  
O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, DC 20006

To Jenks:

Terry C. Jenks  
12017 Running Creek Road  
Louisville, Kentucky 40243

with a copy to:

G. Lee Smith, Jr., Esq.  
His Attorney  
305 Courtyard Square  
Carrollton, Georgia 30117

11. Each of the Parties warrants that neither it nor any person associated with it has directly or indirectly paid or promised to pay any other Party hereto or any person associated with such Party any consideration for the withdrawal of the application of Jenks, except as expressly recited and disclosed herein.

12. This Agreement and its accompanying Promissory Note and Escrow Agreement are the only agreements between the parties and contain all of the terms and conditions agreed to with respect to the subject matter of this Agreement. This Agreement shall be binding upon the parties hereto, their heirs, legatees, successors and assigns.

13. Each of the Parties further warrants that this Agreement is legally binding upon such Party and is enforceable in accordance with its terms.

14. In the event of any action to enforce this Agreement, the prevailing party shall be entitled to recover his costs of suit, including reasonable attorneys' fees.

15. This Agreement may be signed in counterparts with each counterpart having the same force and effect as if all signatures were upon each counterpart copy. This Agreement shall come into effect upon execution by both Parties. The last date upon which it is signed shall be deemed the date upon which it is executed and effective.

16. This Agreement shall be construed under and governed by the Communications Act of 1934, as amended, the rules, regulations, and policies of the FCC, where applicable, and the laws of the State of Georgia.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date below.

STEVEN L. GRADICK

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Steven L. Gradick

TERRY C. JENKS

Date: 9-13-93

By:   
Terry C. Jenks



14. In the event of any action to enforce this Agreement, the prevailing party shall be entitled to recover his costs of suit, including reasonable attorneys' fees.

15. This Agreement may be signed in counterparts with each counterpart having the same force and effect as if all signatures were upon each counterpart copy. This Agreement shall come into effect upon execution by both Parties. The last date upon which it is signed shall be deemed the date upon which it is executed and effective.

16. This Agreement shall be construed under and governed by the Communications Act of 1934, as amended, the rules, regulations, and policies of the FCC, where applicable, and the laws of the State of Georgia.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date below.

STEVEN L. GRADICK

Date: September 14, 1993

By:

  
Steven L. Gradick

TERRY C. JENKS

Date: \_\_\_\_\_

By:

\_\_\_\_\_  
Terry C. Jenks

**ATTACHMENT A**

## ESCROW AGREEMENT

This **ESCROW AGREEMENT** ("Agreement") by and between Terry C. Jenks (hereinafter "Jenks") and Steven L. Gradick (hereinafter "Gradick") (collectively, the "Parties") reflects the understanding and agreement of the Parties and the undersigned Co-Escrow Agents as to the terms and conditions that will govern the Escrow Account to be established pursuant to the Settlement Agreement by the between Jenks and Gradick, two mutually exclusive applicants for a construction permit for a new FM broadcast station to serve Bowdon, Georgia:

**WHEREAS**, simultaneously with the execution of this Agreement, Gradick and Jenks have entered into a Settlement Agreement, whereby Gradick has agreed to pay Jenks a sum not to exceed FIFTY-TWO THOUSAND DOLLARS (\$52,00.00), in consideration for which Jenks has agreed to seek dismissal of his above-referenced application;

**WHEREAS**, the Settlement Agreement provides that Gradick shall make an initial payment of TEN THOUSAND DOLLARS (\$10,000.00) to Jenks, which shall be placed into escrow immediately upon execution of the Settlement Agreement and shall be paid to Jenks after final approval of the Settlement Agreement by the Federal Communications Commission (FCC) and upon finality of the Memorandum, Opinion and Order affirming the Report and Order in MM Docket No. 90-309, DA 93-932, released August 4, 1993.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and agreements herein contained, the parties and the Co-Escrow Agents covenant and agree as follows:

1. Pursuant to the Settlement Agreement between Jenks and Gradick, the Parties hereby appoint and designate Audrey P. Rasmussen and G. Lee Smith, Jr. as Escrow Agents (hereinafter referred to as "Escrow Agents").

2. Gradick shall, immediately upon the execution of this Agreement and the concurrent Settlement Agreement, deposit with Co-Escrow Agent the sum of TEN THOUSAND DOLLARS (\$10,000.00) (the "Escrowed Funds"). Co-Escrow Agents shall, pursuant to the Settlement Agreement, deposit such funds into an interest-bearing escrow account in a federally insured bank acceptable to both parties. At the same time, Gradick shall execute a Promissory Note, in the form attached to the Settlement Agreement as Attachment B, and deliver the executed Promissory Note to the Co-Escrow Agents. Co-Escrow Agents shall hold the Escrowed Funds and the Promissory Note in escrow so long as the conditions for distribution of the Escrowed Funds have not occurred.

3. Within five (5) days after the FCC order(s) approving the Settlement Agreement, granting the Gradick application for construction permit for a new FM radio station in Bowdon, Georgia, and dismissing the Jenks application becomes a Final Order, as that term is defined in paragraph 6 of the Settlement Agreement and upon finality of the Report and Order, Supra, whichever is last to occur, the Co-Escrow Agents shall disburse

the Escrowed Funds to Jenks in accordance with Paragraph 3(b) of the Settlement Agreement and the terms and conditions herein. Upon final distribution of the Escrowed Funds to Jenks, all earned interest thereon shall be paid to Gradick.

4. In the event the Co-Escrow Agents are notified in writing by both Parties not to distribute the Escrowed Funds, the Co-Escrow Agents shall not make a distribution of the Escrowed Funds until both Parties authorize distribution in writing.

5. In the event that one of the Parties disputes whether disbursement should be made, such Party shall notify the Co-Escrow Agents in writing prior to the date that disbursement is due to be made, and the Co-Escrow Agents shall promptly notify the other Party. The money shall nevertheless be disbursed under this Agreement on the first business day following the required date of such disbursement, unless Co-Escrow Agents receive written notification by the scheduled date of the disbursement that legal action has commenced in a court of competent jurisdiction. If such notification is timely received, then no disbursement shall be made until a final judgment by a court of competent jurisdiction settles any controversy between the Parties and instructs the Co-Escrow Agents accordingly, or until the parties settle their controversy and jointly instruct Co-Escrow Agents in writing how to proceed.

6. Distribution shall occur when a cashier's or certified



mail, postage prepaid, registered, return receipt requested, or deposited with Federal Express for overnight delivery.

7. Acceptance by the Escrow Agent of duties under this Agreement is subject to the following terms and conditions, which Jenks and Gradick and the undersigned Co-Escrow Agents hereby agree shall govern and control the rights, duties and immunities of the Co-Escrow Agents:

(a) The duties and obligations of the Co-Escrow Agents shall be determined solely by the express provisions of this Escrow Agreement and the Co-Escrow Agents shall have no duty or obligation other than to take such specific action and to perform such duties and obligations as are specifically set out in this Agreement. The Co-Escrow Agents shall not be bound in any way by any agreement or contract between the Parties (whether or not the Escrow Agent have knowledge thereof).

(b) The Co-Escrow Agents will not be responsible in any manner whatsoever for any failure in inability of the Parties hereto to honor any of the provisions of this Escrow Agreement.

(c) Jenks and Gradick agree jointly and severally to reimburse and indemnify the Co-Escrow Agents for, and to hold them harmless against, any loss, liability or expenses (not including counsel fees), incurred without bad faith, willful misconduct or gross negligence on the part of Co-Escrow Agents, arising out of performance of the duties and obligations under

this Agreement, as well as the costs and expenses of defending against any claims or liability arising out of or relating to this Agreement.

(d) The Co-Escrow Agents shall be fully protected in acting upon and relying upon any advice, certificate, notice, direction, instruction, request or other paper or document which Co-Escrow Agents in good faith believed to be genuine and to have been signed or presented by the proper Party; and they may assume that any person purporting to give such advice, certificate, notice, direction, instruction, request or other paper or document has been duly authorized to do so.

(e) The Co-Escrow Agents shall not be liable for any error of judgment, or for any act done or step taken or omitted by them in good faith or for any mistake in fact or law, or for anything which they may do or refrain from doing in connection herewith, except their own gross negligence or willful misconduct.

(f) In the event of disagreement about the interpretation of this Escrow Agreement, or about the rights and obligations or the propriety of any action contemplated by the Co-Escrow Agents hereunder, Co-Escrow Agents may, at their sole discretion, file an action in interpleader to resolve the said disagreement. The Co-Escrow Agents shall be indemnified by Jenks and Gradick jointly and severally for all costs, including reasonable attorneys' fees of any nature (including appeal) in connection with the aforesaid interpleader action. Upon the

completion of all of the events described herein, Co-Escrow Agents shall be discharged from all of their duties, obligations and responsibilities under this Escrow Agreement.

(g) Jenks shall bear the costs and services of G Lee Smith, Jr. and Gradick shall bear the costs and services of Audrey P. Rasmussen hereunder, unless otherwise ordered by a court of competent jurisdiction.

(h) This Escrow Agreement shall not be amended or modified except by an instrument in writing and signed by the Parties and Co-Escrow Agents.

8. This Agreement shall terminate if either of the following occurs:

(a) The obligations of Escrow Agents are fully performed; or

(b) The Parties, in writing, order Escrow Agents to terminate this Agreement.

9. The Co-Escrow Agents, Audrey P. Rasmussen and G. Lee Smith, Jr., join in the signing of this Agreement to acknowledge their duties and obligations hereunder. Either Co-Escrow Agent may resign as Co-Escrow Agent at any time by mailing written notice to all of the signatories hereto. In the event of such a resignation, the Parties may appoint a new Co-Escrow Agent having all the rights, obligations, and immunities of the Co-Escrow Agent herein.



10. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their permitted assigns, successors, and legal representatives.

11. Any notice pursuant or relative to this Agreement shall be deemed given when delivered in writing personally or by certified mail, postage prepaid, and return receipt requested, to the following at the addresses below:

To Gradick:

Steven L. Gradick  
2225 Victory Church Road  
Bowdon, Georgia 30100

To Jenks:

Terry C. Jenks  
12017 Running Creek Road  
Louisville, Kentucky 40243

To Co-Escrow Agent Rasmussen:

Audrey P. Rasmussen, Esq.  
O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006

To Co-Escrow Agent Smith:

G. Lee Smith, Jr., Esq.  
305 Courtyard Square  
Carrollton, Georgia 30117

12. This Escrow Agreement shall be construed under the laws of the District of Columbia.

13. This Escrow Agreement may be signed in counterparts, all of which together shall constitute one and the same instrument. The Agreement shall come into effect upon execution by all